

WICKLOW COUNTY COUNCIL

**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5**

CHIEF EXECUTIVE ORDER NO. CE/PDE/1097/2023

Reference Number: EX 32/2023
Name of Applicant: Elizabeth Treacy

Nature of Application: Section 5 Referral as to whether "change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings" is or is not exempted development

Location of Subject Site: 14 Castle Street, Wicklow Town, A67 K884.

Report from Chris Garde EP & Suzanne White, SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings at 14 Castle Street, Wicklow Town, A67 K884" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- The details submitted under Section 5 Declaration on 29/05/2023.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended).

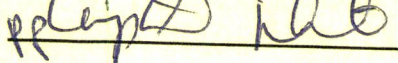
Main Reasons with respect to Section 5 Declaration:

- The Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884 would be development having regard to the provision of Section 3 of the Planning and Development Act 2001 (as amended).
- The works would come within the description of Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001(as amended). These exemptions however are subject to the restriction set out under Article 9 of the Regulations which provides that development shall not be exempted development if the carrying out of such development would consist or comprise the formation, layout out or material widening of a means of access to a public

road the surfaced carriageway of which exceeds 4 metres in width. Given the public road width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the Planning and Development Regulations 2001(as amended).

Recommendation

The Planning Authority considers that "change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings at 14 Castle Street, Wicklow Town, A67 K884" is development and is not exempted development as recommended in the planning report.

Signed  Dated 22 day of June 2023

ORDER:

I HEREBY APPROVE that a declaration to issue stating:

That "change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings at 14 Castle Street, Wicklow Town, A67 K884" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: 
A Director of Services
Planning Development & Environment

Dated 23rd day of June 2023



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol
Elizabeth Treacy Planning Development and Environment

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco
Sulomh / Website: www.wicklow.ie

23rd June 2023

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX32/2023

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.**





Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol
Planning Development and Environment**

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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Elizabeth Treacy

Location: 14 Castle Street, Wicklow Town, A67 K884

CHIEF EXECUTIVE ORDER NO. CE/PDE/1097/2023

A question has arisen as to whether “change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings at 14 Castle Street, Wicklow Town, A67 K884” is or is not exempted development.

Having regard to:

- The details submitted under Section 5 Declaration on 29/05/2023.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884 would be development having regard to the provision of Section 3 of the Planning and Development Act 2001 (as amended).
- The works would come within the description of Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001(as amended). These exemptions however are subject to the restriction set out under Article 9 of the Regulations which provides that development shall not be exempted development if the carrying out of such development would consist or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width. Given the public road width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the Planning and Development Regulations 2001(as amended).





Comhairle Contae Chill Mhantáin Wicklow County Council

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The Planning Authority considers that "change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings at 14 Castle Street, Wicklow Town, A67 K884" is development and is not exempted development.

Signed:

ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 23rd June 2023

Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas

This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stúirthóir Seirbhísí, Forbairt Pleanála agus Comhshaol.
All correspondence should be addressed to the Director of Services, Planning Development & Environment.



WICKLOW COUNTY COUNCIL

Planning Department

Section 5 – Application for declaration of Exemption Certificate

TO: Fergal Keogh SE, Edel Bermingham SEP, Suzanne White SEP.
FROM: Chris Garde EP.
SUBJECT REF: EX 32/2023
DECISION DUE DATE: 26/06/2023
APPLICANT: Elizabeth Treacy
ADDRESS: -
EXEMPTION QUERY: change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings).

Application Site:

14 Castle Street, Wicklow Town, A67 K884.

Photographs:

Google Street View Image of subject site (November 2022).



Relevant Plans/ Policies:

Settlement	Level 2 – Wicklow is designated a Key Town within the Core Region.
Land Use Plan	Wicklow Town – Rathnew Plan 2013-2019
Zoning	The application site is zoned: RE - Existing Residential
Zoning Objective	<i>RE - Existing Residential:</i> <i>"To protect and preserve existing residential uses and provide for infill residential development."</i>
Zoning Description	<i>"To protect, provide and improve residential amenities of existing properties and areas while allowing for infill residential development that reflects the established character of the area in which it is located and with minimal impact on the existing residential amenity."</i>
Archaeological Potential	Located within the "SMRZONE: R148694" and "Areas of Archaeological Potential or Significant Potential or Significants (CDP2022-2028)"

CDP 2022-2028	Particularly Relevant Chapters/Sections/Objectives: <ul style="list-style-type: none">• Chapter 5 – Town & Village Centres - Placemaking & Regeneration• Chapter 6 – Housing• Chapter 7 – Community Development• Chapter 12 – Sustainable Transportation• Chapter 13 – Water Services• Chapter 14 – Flood Management• Chapter 17 – Natural Heritage & Biodiversity• Chapter 18 – Green Infrastructure
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Appendices	Appendix 1, Development and Design Standards
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Heritage:

The structure is not protected under the current Wicklow Town – Rathnew Plan 2013-2019 or Wicklow County Development Plan, however, it is included on the NIAH Register.

Planning History:

Specific to this site.

Ref:	00622473
Applicant:	Gerard Brady
Development:	Extension, velux roof, lights
Decision:	Conditional

Question:

The applicants have applied to see whether or not the following is or is not development and is or is not exempted development:

- 1) Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884.

*Please Note: Limited details (just a location map, but no design details) regarding the development have been provided. A separate letter provided as part of the Section 5 states the following:
"Outline of work: Removal of a wall and addition of paving. The public footpath in front of the garden is not dropped so I would like to get advice to see if this is possible and road markings if necessary. The garden measures approx. 320cm x 545cm."

Legislative Context

Planning and Development Act 2000 (as amended)

Section 2(1) of the Act states the following in respect of the following:

*“**structure**” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

*“**works**” includes Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”*

Section 3(1) of the Act states the following in respect of ‘**development**’:

*“In this Act, ‘**development**’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

Section 4 sets out the types of works that while considered ‘development’, can be considered ‘exempted development’ for the purposes of the Act.

Section 4 (1) (h) is relevant for the purposes of this declaration:

“development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.”

Section 4(2) makes provision for ministerial regulations to set out further exemptions. The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the act.

Section 4(3); A reference in this Act to exempted development shall be construed as a reference to development which is—

- a) any of the developments specified in subsection (1), or
- b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Planning and Development Regulations 2001(as amended)

Article 6 (1):

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1):

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) If the carrying out of such development would—

(i) Contravene a condition attached to a permission under Act or be inconsistent with any use specified in a permission under the Act,

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
(iii) Endanger public safety by reason of traffic hazard or obstruction of road users,

Details Submitted in support of Application:

The applicants are applying for a Section 5 Declaration in relation to the following;

- 1) Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884.

*Please Note: Limited details (just a location map, but no design details) regarding the development have been provided. A separate letter provided as part of the Section 5 states the following:

"Outline of work: Removal of a wall and addition of paving. The public footpath in front of the garden is not dropped so I would like to get advice to see if this is possible and road markings if necessary. The garden measures approx. 320cm x 545cm."

Assessment:

The querist seeks confirmation that the works relating to the change of use from garden to a driveway (at 14 Castle Street, Wicklow Town, A67 K884) do not require planning permission (taken to mean; is exempted development).

1.

The first assessment must be whether or not the proposal outlined above constitutes development within the remit of Section 3 of the Planning and Development Act 2001. In this regard, Section 3 of the Planning and Development Act provides that:

"development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

It should be noted that Section 2 of the Act defines works as:

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

I am satisfied that the proposal involves works to the existing land and therefore constitutes development.

2.

The second stage of the assessment is to determine whether or not the works would be exempted development under the Planning and Development Act 2000 (as amended) or it's associated Regulations.

The second stage of the assessment is to determine whether or not the proposal would be exempted development under the Planning and Development Act 2000 (as amended) or it's associated Regulations.

The proposal consists of the:

"1) Change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884*

Outline of work: Removal of a wall and addition of paving. The public footpath in front of the garden is not dropped so I would like to get advice to see if this is possible and road markings if necessary. The garden measures approx. 320cm x 545cm".

The works would come within the description of Class 5 of Article 6, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) which refers to:

Class 5

"The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete".

Conditions and Limitations

- 1. "The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
- 3. No such structure shall be a metal palisade or other security fence".*

These exemptions however are subject to the restriction set out under Article 9 of the Planning and Development Regulations 2001 (as amended) which provides that development shall not be exempted development if the carrying out of such development would consist or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

Given the public road width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the planning and Development Regulations 2001 (as amended).

RECOMMENDATION: Not Exempted Development

With respect to the query under Section 5 of the Planning and Development Act 2000 (as amended), as to whether:

The "Change of use of a garden to a driveway (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884*

Outline of work: Removal of a wall and addition of paving. The public footpath in front of the garden is not dropped so I would like to get advice to see if this is possible and road markings if necessary. The garden measures approx. 320cm x 545cm" is or is not exempted development within the meaning of the Planning and Development Act 2000 (as amended).

The Planning Authority considers that:

The "Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884" **is development but is not exempted development** within the meaning of the Planning and Development Act, 2000 (as amended).

Main Considerations with respect to Section 5 Declaration:

- The details submitted under Section 5 Declaration on 29/05/2023.
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended).
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The Change of use of a garden to a driveway* (to include footpath alterations i.e. dropping footpath and road markings) at 14 Castle Street, Wicklow Town, A67 K884 would be development having regard to the provision of Section 3 of the Planning and Development Act 2001 (as amended).
- The works would come within the description of Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001(as amended). These exemptions however are subject to the restriction set out under Article 9 of the Regulations which provides that development shall not be exempted development if the carrying out of such development would consist or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width. Given the public road width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the Planning and Development Regulations 2001(as amended).

I recommend that the applicant, Elizabeth Treacy of No. 14 Castle Street, Wicklow Town, A67 K884 be informed accordingly.


Executive Planner

Date: 22/06/2023

Agreed
White SEP
22/6/23

Agreed
M/DOS 23/06/23

MEMORANDUM
WICKLOW COUNTY COUNCIL

TO: Chris Garde FROM: Nicola Fleming
Executive Planner Staff Officer

**RE:- EX 32/2023 - Declaration in accordance with Section 5 of the
Planning & Development Acts 2000 (as amended)
Elizabeth Treacy**

I enclose herewith for your attention application for Section 5 Declaration
received 29th May 2023.

The due date on this declaration is 26th June 2023.



Staff Officer
Planning Development & Environment



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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Suíomh / Website: www.wicklow.ie

Elizabeth Treacy

31st May 2023

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 32/2023
Change of use of a garden to a driveway

A Chara

I wish to acknowledge receipt on 29th May 2023 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 26th June 2023.

Mise, le meas



NICOLA FLEMING
STAFF OFFICER
PLANNING DEVELOPMENT AND ENVIRONMENT



Wicklow County Council
County Buildings
Wicklow
0404-20100

29/05/2023 13 37 42

Receipt No L1/0/313847
***** REPRINT *****

ELIZABETH TREACY
14 CASTLE STREET
WICKLOW TOWN
WICKLOW
A67K884

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total	80 00 EUR
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Tendered	
Credit Card	80 00

Change	0 00
--------	------

Issued By Cashier5MW
From Customer Service Hub
Vat reg No 0015233H



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County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
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Office Use Only

Date Received _____

Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Name of applicant: Elizabeth Treacy

Address of applicant: _____

Note Phone number and email to be filled in on separate page.

WICKLOW COUNTY COUNCIL

29 MAY 2023

PLANNING DEPT.

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) _____

Address of Agent : _____

Note Phone number and email to be filled in on separate page.

3. Declaration Details

i. Location of Development subject of Declaration 14 Castle Street,
Wicklow Town, Wicklow, A67K884

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes No.

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier _____

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration _____

Change of use of a garden to a driveway.
* See attached letter

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration _____

① Public footpath alterations ie Dropping footpath
② Roadmarkings

Additional details may be submitted by way of separate submission.

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? no

vii. List of Plans, Drawings submitted with this Declaration Application no

viii. Fee of € 80 Attached ? _____

Signed : Elizabeth Treacy Dated : 29-05-23

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still

governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

• **Application for pre-planning query:**

Dear Sir/Madam

I would like to get pre-planning advice on turning a garden into a driveway.

Location: 14 Castle Street, Wicklow town, A67K884. Please see attached map. The proposed site is highlighted.

Outline of work: Removal of a wall and addition of paving. The public footpath in front of the garden is not dropped so I would like to get advice to see if this is possible and road markings if necessary. The garden measures approx. 320cm x 545cm.

If you need any additional information, please let me know.

I look forward to hearing from you.

Kind regards

Liz Treacy

✉

Surveyed 1980
Revised 2005
Levelled 1979-1990

Urban PLACE Map



ITM CENTRE PT. C
731963,693897

DESCRIPTION

MAP SHEET

1:1000
4020-20 4021-16

A2
ORDNANCE SURVEY
IRELAND



Produced by National Map Centre,
34 Angier Street, Dublin 2
On behalf of Ordnance Survey Ireland
Phoenix Park, Dublin 8.

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a tharchur in aon fhorm ná ar aon bh
cead i scríbhinn roimh ré ó úinéirí an
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